



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 4899488

Date: OCT. 5, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a painter of miniature art, seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to aliens with extraordinary ability if:

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate

international recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); see also *Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner is a painter, specializing in “traditional [redacted] miniature painting.” The Petitioner states: “For more than a decade, I have worked in my workshop . . . at [redacted] old city market.” He entered the United States as a B-2 nonimmigrant visitor in December 2016, and filed the immigrant petition in October 2017.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Petitioner claims to have met six criteria, summarized below:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (ii), Membership in associations that require outstanding achievements;
- (iii), Published material about the alien in professional or major media;
- (v), Original contributions of major significance;
- (vi), Authorship of scholarly articles; and
- (vii), Display at artistic exhibitions or showcases.

The Director concluded that the Petitioner met two of the evidentiary criteria, relating to prizes and to artistic display. On appeal, the Petitioner asserts that he also meets the other four claimed evidentiary criteria. After reviewing all of the evidence in the record, we conclude that the Petitioner has satisfied only one criterion, relating to artistic display. We will discuss the other five claimed criteria below.

Documentation of the alien’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i)

The Director concluded that the Petitioner’s evidence satisfies this criterion. We disagree.

Translated photocopies of prize certificates indicate that the Petitioner won an award for “Traditional Hand Craft” at the [redacted] Republican Youth Competition in [redacted] 2011, and two awards at the [redacted] in [redacted] a “Silver Award” in 2013 and “Third Prize” in 2015.

The only background information the Petitioner submitted regarding the [redacted] competition is a United Nations report which cited the competition as one of several “undertaking[s] to condemn racial discrimination.” The report also indicated that the competition is “for talented youth aged 15-25,” thereby excluding the most experienced artists from participation; the report indicates that the competition prizes consist, at least in part, of academic scholarships.

The Petitioner also submitted two promotional articles about the expositions in [redacted] This background information does not mention any prizes or establish that those prizes are nationally or internationally recognized. International participation in an event is not the same as international recognition of awards from that event.

The submitted materials do not show that the awarding of the prizes attracts any significant notice, either among the public or among others working in the field. The Petitioner has not established the national or international recognition of the prizes and awards discussed above.

For the above reasons, the Petitioner has not met the requirements of this criterion.

Documentation of the alien’s membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.
8 C.F.R. § 204.5(h)(3)(ii)

A photocopied membership card indicates that the Petitioner holds the position of “Master” with [redacted] City Administration.” A letter attributed to the head of [redacted] Regional Administration reads, in part: “[redacted] Association requires outstanding achievements of its members, as judged by nationally or internationally recognized experts in the respective field [sic] of Folk Art or Craftsmanship,” and that the Petitioner’s “membership was based on his outstanding achievements in the field of traditional [redacted] miniature art painting.”

A letter attributed to the chief executive officer (CEO) of [redacted] reads, in part: “In accordance with the article 5.4 of the Charter of [redacted], admission to the Association is granted based on the recommendation of Art Experts Council composed solely of nationally or internationally recognized experts.” The letter also indicates that two “internationally recognized expert[s]” recommended the Petitioner for membership. The Petitioner submits letters attributed to those two named artists. The letters are nearly identical, both stating that the artists “recommended [the Petitioner’s] admission to [redacted] based on his outstanding achievements in the field of traditional [redacted] miniature art,” and that those achievements “fully comply with the requirements of . . . article 5.4 of the Charter.”

The submitted letters do not provide any information about the Petitioner's achievements or explain why they are outstanding. It cannot suffice simply to assert that membership in [] requires outstanding achievements. Merely repeating the language of the statute or regulations does not satisfy the Petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Assocs., Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). The letters refer to article 5.4 of []'s Charter, but the Petitioner does not submit a copy of the Charter itself. Third-party assertions as to what the Charter says cannot carry the same weight.

Furthermore, the similarities in the letters suggest that the language in the letters is not the authors' own. *Cf. Surinder Singh v. Board of Immigration Appeals*, 438 F.3d 145, 148 (2d Cir. 2006) (upholding an immigration judge's adverse credibility determination in asylum proceedings based in part on the similarity of some of the affidavits); *Mei Chai Ye v. U.S. Dept. of Justice*, 489 F.3d 517, 519 (2d Cir. 2007) (concluding that an immigration judge may reasonably infer that when an asylum applicant submits strikingly similar affidavits, the applicant is the common source).

A second letter attributed to the []'s CEO describes organization's purpose and activities, but does not discuss how it selects its members. This second letter indicates that [] has 15,000 members, a size that does not readily suggest highly selective membership requirements.

Also, we note that the Petitioner's identification card was issued not by the national organization, but by a regional authority in [] consistent with the conclusion that membership is determined at the regional level, rather than the national or international level.

We agree with the Director's conclusion that the Petitioner has not shown that his involvement with [] constitutes membership in an association that requires require outstanding achievements of its members, as judged by recognized national or international experts in their disciplines or fields.

Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation. 8 C.F.R. § 204.5(h)(3)(iii)

The Petitioner submits translated copies of articles attributed to the magazine *JannatMakon* (2011), and the newspapers *Buxoro Oqshomi* (2015) and *Buxoroi Sharif* (2017). The Petitioner asserts that each of these publications constitutes major media with national circulation in []

The *JannatMakon* piece consists of two paragraphs written by, rather than about, the Petitioner. He mentions his teacher, but most of what he wrote is about the traditional art form of miniature painting. Therefore, this article is not published material about the Petitioner.

Letters attributed to the "main editors" of the two newspapers attest to the circulation of the newspapers, but the Director determined that the Petitioner did not submit documentary evidence to corroborate those circulation figures. Beyond this valid observation, however, the figures themselves do not appear to be consistent with major media. The letters indicate that *Buxoroi Sharif* prints "around . . . 500" copies per

week, while *Buxoro Oqshomi* prints “around 1150.” Both papers have websites, for which the Petitioner did not provide readership statistics.

The Petitioner also submitted printouts of screen captures from YouTube videos, most of them on his own channel.¹ The Petitioner did not submit transcripts to establish the content of the videos. While websites such as YouTube have the *potential* to reach a large audience, the Petitioner does not show that his channel has done so. View counts on the printouts show that his most-viewed video had accumulated 66 views since September 2016. The other videos had between 22 and 40 views each.

An interview with the Petitioner appeared on the YouTube channel of [REDACTED]. A printed screen capture of that page showed 31 views as of August 28, 2018.² This view count does not indicate that the Petitioner and his work have attracted significant attention, and the Petitioner has not shown that the channel constitutes major media. In any event, this video was not published until July 28, 2018, after the Director had issued a request for evidence; therefore, this video cannot establish eligibility as of the petition’s October 2017 filing date, as required by the regulation at 8 C.F.R. § 103.2(b)(1).

The Director determined that the Petitioner had not shown that the submitted materials meet the regulatory requirements. On appeal, the Petitioner contends that the Director “provided no basis for the rejection of credible, clear and convincing evidence,” but the Petitioner does not identify that evidence or show how it was as definitive as the Petitioner claims on appeal. The burden of proof resides with the Petitioner to establish eligibility, not with the Director to rebut the Petitioner’s evidence and unsubstantiated claims.

We agree with the Director’s determination that the Petitioner has not satisfied this criterion.

Evidence of the alien’s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v)

In order to satisfy this regulation, a petitioner must not only establish original contributions, but also that they have been of major significance in the field. For example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance.

The Petitioner states that he “made an original contribution of major significance to the field of traditional [REDACTED] miniature painting by virtue of reviving ancient style and using narratives from classical Oriental literature,” and by painting “classical subjects” such as “the works of famous [REDACTED] folk poets and writers.” Letters from various individuals also refer to these themes of revival of an ancient folk art form, and inspiration from literary sources.

An “ancient style” is, by definition, not original. Reviving a classical technique using classical themes does not readily suggest originality. One of the letters contains two contradictory assertions in the same

¹ A search of <https://www.youtube.com> on October 1, 2020, indicated that the Petitioner’s channel no longer exists, and the videos on that channel are no longer available.

² The view count of this video (at <https://www.youtube.com/> [REDACTED]) as of October 1, 2020.

sentence, indicating that the Petitioner has “his own unique style” but revived the “style of [a] great old master.”

Also, the submitted letters do not include an explanation as to how the Petitioner’s choice of themes differs from that of other painters of miniatures. Another painter described in the record draws inspiration from “oral traditions of Central Asia,” while the work of a third “shows scenes from daily life in . . . ancient times.” These themes do not appear to differ significantly from the “classical subjects” that the Petitioner favors.

In response to a request for evidence, the Petitioner submitted several letters that do not identify any specific contributions, and are worded, at times, in the manner of employee recommendation letters, although they purport to describe his achievements as a student. A letter attributed to the CEO of Youth Unity of [] indicates that the Petitioner “served as an engine of motivation, inspiring his co-workers to reach new levels in their work,” and “demonstrated good teamwork skills in group assignments.”

An artist identified as the Petitioner’s “tutor in painting miniature” at the Academy of Arts [] asserts: “During his time here, we saw sales of miniature [*sic*] increased threefold.” The record does not otherwise indicate that the Academy sells paintings. The remainder of the letter consists of general praise for the Petitioner, without identifying any specific contributions or explanation of their significance.

Another letter, also on Academy letterhead, is attributed to an individual who states his title as “Chairman of the Association,” but does not specify the name of the association. The “Chairman’s” letter contains several references that have no apparent relevance to art students, such references to clients and customers, and the assertion that the Petitioner “is clearly able to transmit his passion and talent for research to young scientists.”

In denying the petition, the Director stated: “While it is clear that there is value in ‘reviving’ or ‘preserving’ an existing art form it is not sufficient to demonstrate an original contribution.” The Director also determined that the Petitioner had not shown that his work has had an impact on that of other artists.

On appeal, the Petitioner asserts that his “mastery of traditional [] miniature art was recognized as a contribution of major significance to the field by leading experts in this field,” and that the Director arbitrarily refused to consider “unchallenged expert testimony.” On appeal, the Petitioner asserts that the regulatory language:

requires evidence of the alien’s original contributions of major significance *in* the field. The regulation does not require contributions of major significance *to* the field. This is a subtle yet significant difference as the regulation requires an important contribution related to the field, rather than a contribution that dramatically impacts the field.

The Petitioner’s interpretation of the regulations is not controlling. Furthermore, several of the letters upon which the Petitioner relies *do* refer to “contributions of major significance *to* the field.” It remains that skill in an existing, traditional technique is not inherently original.

The Petitioner's claim that these letters represent "unchallenged expert testimony" does not account for anomalies such as shared language and unexplained references to "customers" and "young scientists." In evaluating the evidence, the truth is to be determined not by the quantity of evidence alone but by its quality. *See Matter of Chawathe*, 25 I&N Dec. 376 (quoting *Matter of E-M-*, 20 I&N Dec. 77, 80 (Comm'r 1989)). The anomalies in the quoted letters raise serious questions about the origin of those letters, which diminish their evidentiary weight.

We agree with the Director that the Petitioner has not established that he made original contributions of major significance.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media. 8 C.F.R. § 204.5(h)(3)(vi)

The Petitioner did not initially claim to have satisfied this criterion, but he later submitted a 50-page printout of [REDACTED] which identifies the Petitioner as its sole author and indicates that [REDACTED] Publishing house" (the last word is lowercase in the original) published the book in 2016, with an update in 2018.

The Petitioner also submitted a letter formatted as a "review" of a book by the Petitioner called [REDACTED] [REDACTED], said to have been published in 2016. The record does not contain the book itself or first-hand evidence of its publication or existence.

The regulatory language refers specifically to "articles." Nevertheless, on appeal, the Petitioner states: "It is absurd and unreasonable for the USCIS [U.S. Citizenship and Immigration Services] to claim that only articles may be relied upon to satisfy this criterion, while books and treatises may not." The Director, however, did not raise any such objection, and in fact the Director consistently referred to the written material as an "article."

The Director's objection was that the article was not "written in a scholarly manner." The Petitioner argues, on appeal, that "[t]he book here was clearly . . . of [a] learned and scholarly nature." A USCIS policy memorandum states:

As defined in the academic arena, a scholarly article reports on original research, experimentation, or philosophical discourse. It is written by a researcher or expert in the field who is often affiliated with a college, university, or research institution. In general, it should have footnotes, endnotes, or a bibliography, and may include graphs, charts, videos, or pictures as illustrations of the concepts expressed in the article.

For other fields, a scholarly article should be written for learned persons in that field. ("Learned" is defined as "having or demonstrating profound knowledge or scholarship"). Learned persons include all persons having profound knowledge of a field.³

³ USCIS Policy Memorandum PM-602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14*, 9 (Dec. 22, 2010), <http://www.uscis.gov/legal-resources/policy-memoranda>.

[redacted] generally has the traits of writing for a popular rather than scholarly audience. Furthermore, scholarly articles are subject to peer review and editorial scrutiny, which help to ensure the quality, accuracy, and relevance of the articles. The Petitioner has not shown that his book was held to comparably rigorous standards.

Also, the Petitioner has not established that his books constitute professional or major trade publications or other major media, as the regulations require. Publication, by itself, does not satisfy the regulatory requirements.

We agree with the Director that the Petitioner has not satisfied this criterion.

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a conclusion that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. Much of the Petitioner's evidence indicates his work has attracted only peripheral attention. Letters referring to the Petitioner as a major figure in his field raise concerns, for reasons already explained. The Petitioner has not shown established a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.